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7

8 UNITED STATES DISTRICT COURT  
9 DISTRICT OF NEVADA

10 JIMMY EARL DOWNS,

11 Plaintiff,

12 v.

13 DAVID GRUSMAN, HAROLD WICKHAM,  
14 GLEN WHORTEN, AND THE STATE OF  
NEVADA,

15 Defendants.

Case No. 2:07-cv-000116-JCM-LRL

**MOTION FOR ENLARGEMENT OF TIME**  
**(SECOND REQUEST)**

16 COME NOW Defendants, DAVID GRUSMAN, HAROLD WICKHAM, HOWARD  
17 SKOLNIK), and THE STATE OF NEVADA, by and through their counsel, CATHERINE  
18 CORTEZ MASTO, Attorney General, and J. MARTY HOWARD, Senior Deputy Attorney  
19 General, of the State of Nevada, Office of the Attorney General, and hereby respectfully  
20 submit the instant MOTION FOR ENLARGEMENT OF TIME (SECOND REQUEST) in the  
21 above-referenced matter.

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1 This Motion is brought pursuant to Fed.R.Civ.P. 6(b), LR 6-2, the attached Points and  
2 Authorities, and the papers and pleadings on file with the Court herein.

3 DATED this 7th day of October, 2011.

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5 Respectfully submitted,

6 CATHERINE CORTEZ MASTO

7 Attorney General

8  
9 By:   
10 J. MARTY HOWARD  
11 Deputy Attorney General  
12 Public Safety Division

13 **POINTS AND AUTHORITIES**

14 **I. LEGAL ARGUMENT**

15 Fed.R.Civ.P. 6(b)(1)(A) provides, in pertinent part:

16 (b) *Extending Time.*  
17 (1) *In General.* When an act may or must be done within a  
18 specified time, the court may, for good cause, extend the time:  
(A) with or without motion or notice if the court acts, or if a  
request is made, before the original time or its extension expires[.]

19 Rule 6(b)(1) allows for a party to move for an enlargement of time, the determination of  
20 which lies with the presiding court. "The Court has inherent power and discretion to control its  
21 docket, and the proceedings within the cases on its docket." *Ford v. County of Missoula,*  
22 *Mont.*, 2010 WL 2674036, 1 (D.Mont., 2010) (citing *Landis v. North American Co.*, 299 U.S.  
23 248, 254 (1936); see also Fed.R.Civ.P. 6(b) (advisory committee note, 1946) ("Rule 6(b) is a  
24 rule of general application giving wide discretion to the court to enlarge these time limits or  
25 revive them after they have expired . . .").

26 Defendants are requesting an extension of time to file their Answer to Plaintiff's  
27 Amended Civil Rights Complaint (Doc. 101) before the deadline has expired. Defendants are  
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1 making this request based upon good cause to allow newly assigned counsel to become  
2 familiar with the matters currently pending before this Court.

3 Filed concurrently herewith as Ordered by the Court is a Notice of Acceptance/Non  
4 Acceptance of Service of Process. Counsel is making an appearance on behalf of former  
5 Director Howard Skolnik. Obviously, his answer would not normally be due until a later date.  
6 It makes practical sense and is in the interest of judicial economy to file one Answer on behalf  
7 of all the Defendants in this case.

8 Undersigned counsel, Senior Deputy Attorney General J. Mary Howard, was recently  
9 assigned as lead counsel on this case.<sup>1</sup> In addition to the instant matter, undersigned counsel  
10 has recently been assigned approximately 21 ongoing litigation cases and is also receiving  
11 assignments of newly filed litigation cases.

12 Counsel is in the process of creating hard files from computer files for all the cases  
13 recently assigned to him, including this matter. Furthermore, counsel only obtained furniture  
14 in his office on September 1, 2011, and until such time his resources were limited.

15 Based upon the foregoing, Defendants respectfully request a 30-day enlargement of  
16 time in which to file Defendants' Answer Plaintiff's Amended Civil Rights Complaint to and  
17 including November 6, 2011. This request is made in good faith and not for purposes of  
18 delay.

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28 <sup>1</sup> See Notice of Change of Lead Counsel filed herein on August 16, 2011 (Doc. 98)


1 **III. CONCLUSION**

2 Because good cause has been shown, Defendants respectfully request the Court to  
3 enlarge the time by which they must file an Answer to Plaintiff's Amended Civil Rights  
4 Complaint pursuant to Fed.R.Civ.P. 6(b) by 30 days to November 6, 2011.

5 Dated this 7th day of October, 2011.

6 Respectfully submitted,

7 CATHERINE CORTEZ MASTO  
8 Attorney General

9 By:   
10 J. MARTY HOWARD  
11 Deputy Attorney General  
12 Nevada State Bar No. 1052  
13 Public Safety Division

14 "IT IS SO ORDERED:

15   
16 UNITED STATES MAGISTRATE JUDGE

17 DATED: 10-14-11  
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DECLARATION J. MARTY HOWARD

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2 STATE OF NEVADA           )  
                                          ) ss:  
3 COUNTY OF CLARK        )

4       Affiant, J. MARTY HOWARD, being first duly sworn, hereby states that:

5       I present this Affidavit in support of Defendants Motion for Enlargement of Time  
6 (Second Request) in the United States District Court, District of Nevada Case No. 2:07-cv-  
7 0116-JCM-LRL, *Jimmy Earl Downs v. David Grusman, et. al.*; I have personal knowledge of  
8 and am competent to testify regarding the matters stated in this Declaration.

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10       I am an attorney licensed to practice in the State of Nevada, and I am admitted to  
11 practice in the United States District Court for the District of Nevada.

12       I am currently employed as a Sr. Deputy Attorney General at the Nevada Office of the  
13 Attorney General, Bureau of Litigation, Public Safety Division, NDOC Unit, in Las Vegas  
14 Nevada, and have been assigned to represent Defendants in the United States District Court,  
15 District of Nevada Case No. 2:07-cv-0116-JCM-LRL, *Jimmy Earl Downs v. David Grusman,*  
16 *et. al.* The Notice of Change of Lead Counsel (Doc. 98), was served and filed on August 16,  
17 2011.

18  
19       This Court has granted one prior enlargement of time in this matter. (CR 103). This  
20 Court has granted the previous Defendants until October 7, 2011 to respond to the Amended  
21 Complaint.

22       My previous job duties were in the Nevada Department of Transportation. I was  
23 reassigned to work in the litigation division and moved into my office on August 17, 2011. On  
24 August 16, 2011, undersigned counsel through the Nevada Office of the Attorney General,  
25 was assigned as lead counsel to the instant matter, as well as approximately 21 additional  
26 ongoing litigation cases. Undersigned counsel is also being assigned to new litigation matters  
27 in addition to his current ongoing litigation caseload.  
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Attorney General's Office  
555 E. Washington, Suite 3900  
Las Vegas, NV 89101

1 I just obtained furniture in my office on September 1, 2011 and had the opportunity to  
2 unpack my personal belongings including, but not limited to, my legal books and materials.  
3 Until I received my furniture on September 1, 2011, my resources were limited. I have just  
4 recently been reassigned to a new secretary. Since I began this new job we continue to be in  
5 the process of creating hard case files from computer case files for all the cases recently  
6 assigned to me. The previous attorney kept all matters on her computer without the benefit of  
7 hard case files.

8 I finally recently had the opportunity to review the file in this matter. This file has over  
9 111 filed documents. I will need additional time to review the documents and evidence in this  
10 matter before I can file a good faith Answer to the Amended Complaint. However, filed  
11 concurrently herewith as Ordered by the Court is a Notice of Acceptance/Non Acceptance of  
12 Service of Process. Counsel will now be making an appearance on behalf of a Defendant  
13 who has not previously been a party to this litigation, i.e., former Director Skolnik. It makes  
14 practical sense and is in the interest of judicial economy to file one Answer to the Amended  
15 Complaint on behalf of all the Defendants.

16 I have been very busy filing other matters in all the other cases under my responsibility.  
17 It is taking me some time to become familiar with my new job assignment as I am already on  
18 my second secretary, am subject to new policies and procedures, have a new client, and am  
19 once again becoming familiar with a new area of the law.

20 As such, I am respectfully requesting an additional 30-day extension in this matter to  
21 gather information, conduct legal research, and prepare a good faith Answer to Plaintiff's  
22 Amended Civil Rights Complaint.


23 This is the second request for an extension being made by, and on behalf of,  
24 Defendants DAVID GRUSMAN, HAROLD WICKHAM and THE STATE OF NEVADA in this  
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1 matter. However, it is the first request on behalf to former Director Howard Skolnik whose  
2 Answer is not even legally due at this time.

3 This request is being made prior to the expiration of the deadline and is being made in  
4 good faith and not for the purpose of delay.

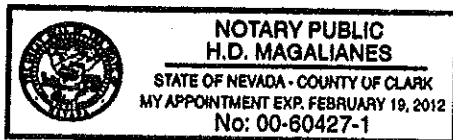
5 FURTHER AFFIANT SAYETH NAUGHT.

6 DATED this 7th day of October, 2011.

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9   
U. MARTY HOWARD

10 SUBSCRIBED AND SWORN to before  
11 me this 7th day of October, 2011.

12   
13 NOTARY PUBLIC in and for  
said County and State.



**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of the Office of the Attorney General and that on the 7th day of October, 2011, I served the foregoing **MOTION FOR ENLARGEMENT OF TIME (SECOND REQUEST)** by causing a true and correct copy thereof to be filed with the Clerk of the Court using the CM/ECF system and by causing a true and correct copy thereof to be delivered to the Department of General Services, for mailing at Las Vegas, Nevada, addressed to the following:

JIMMY EARL DOWNS #63678  
SOUTHERN DESERT CORRECTIONAL CENTER  
PO BOX 208  
INDIAN SPRINGS NV 89070

/s/ Michele Caro  
An employee of the Office of the Attorney General